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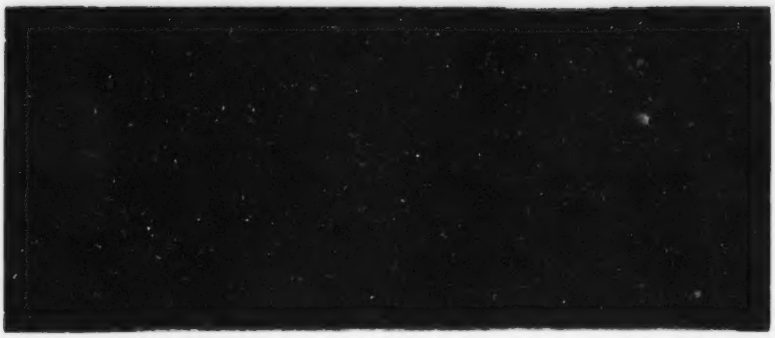

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TOWARDS A "SOCIAL CLAUSE" WITHIN THE HEMISPHERIC ECONOMIC INTEGRATION PROCESSES (NAFTA, MERCOSUR, FTAA)

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The document offers a particular process through which a social clause on core labour standards would be realised in North America. The particular process offered is a joint venture between the OAS and the ILO as a first step towards the eventual establishment of an hemispheric organisation that would secure the observance and promotion of ILO conventions by nations in the hemisphere. The document recognises the difficulties in pursuing labour standards in a non-protectionist way because of the view that labour standards obstruct market processes. While higher labour standards could end the "race to the bottom," it emphasises the need to be realistic about searching for a common acceptable floor rather than an ideal ceiling, especially since higher labour standards can also do more harm than good, such as resulting in higher unemployment and lower per capita income. In essence, a "social clause" on labour standards requires that parties take a leadership role in establishing and applying ethical business principles, in setting up a code of ethics and apply these ethical principles in all of their relations, including with local communities, to improve the lives of employees and customers, to provide the highest quality products and services and to contribute to the social well-being and improvement of the countries in which their businesses operate. The core values reflected in this "social clause" include dignity, openness, honesty, fairness, social justice, equality and mutual respect. Its guiding principles include freedom of association and protection of the right to organise, the right to collective bargaining, the right to strike, prohibition of forced labour, restrictions on the employment of children and young persons, elimination of employment discrimination, equal pay for women and men. Enforcement measures of the "social clause" include intergovernmental co-operation, publication and dissemination of the standards to business communities, bi-annual reports on the implementation of the standards to be reviewed by a Committee of Experts, which would submit its conclusions and recommendations to a Joint OAS-ILO Committee for Labour Rights and Social Development, which will then publish a general report.

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TABLE OF CONTENTS

Chapter 1. Labor Rights in NAFTA, MERCOSUR and FTAA . . . . . .

a) NAFTA . . . . . .

b) Southern America Integration Projects . . . . . .

c) U.S. GSP: Protectionism vs Social Dumping . . . . . .

d) The Free Trade Areas for the Americas (FTAA) . . . . . .

Chapter 2. Rights, Prohibitions and Interests: Clues for Screening International Conventions . . . . . .

a) An Emphasis on Rights and Liberties . . . . . .

b) An Emphasis on Prohibited Human Behaviors . . . . . .

c) An Emphasis on Human Interests . . . . . .

Chapter 3. Toward a "Social Clause": From Core Values to Enforcement Measures . . . . . .

a) Core Values . . . . . .

b) The Respect of Core Labor Standards . . . . . .

c) Combatting Corruption . . . . . .

d) Enforcement Measures . . . . . .

Selective Bibliography . . . . . .

Towards a "Social Clause" Within the Hemispheric Economic Integration Processes (NAFTA, MERCOSUR, FTAA)

The process of the Free Trade Area for the Americas (FTAA) is going ahead since the 1994 Miami Summit of the Americas. Meanwhile, NAFTA, MERCOSUR and the other Southern Economic integration projects (such as the Andean Pact and CARICOM) are growing and giving birth to bilateral free trade agreements. As to the core labor rights or standards, NAFTA has its own Labor Agreement (NAALC). MERCOSUR has not already its own Charter of Fundamental Rights. Then, the question is: **Is there a scenario of hemispheric economic integration that could ensure to set up a Charter of Core Labor Standards (or "Social Clause") for the Americas?** Now, there is no indication that core labor standards will be safeguarded throughout the FTAA, so that in 2005, when the "real" negotiations for a free trade agreement for the Americas could perhaps begin, would it be strategically better to let to the FTAA process the "caring for core labor standards"? Or, would it be more relevant to give this task to an eventual "**Joint OAS-ILO Committee for Labor Rights and Social Development**"? This paper will try to give the context of such basic questions, as well as the guidelines for an eventual Social Clause.

Chapter 1. Labor Rights in NAFTA, MERCOSUR and FTAA.

a) NAFTA

On January 1st, 1994, NAFTA took effect. The Labor Agreement (NAALC) was added to NAFTA by the Americans in order to resolve the conflicts or tensions with the "American Federation of Labor and Congress of Industrial Organizations". The AFL-CIO believed that NAFTA would lead to job losses in U.S., since American companies would migrate some of their operations or plants in Mexico and would create a "race to the bottom" as to U.S. wages. On October 4, 1992, during a campaign speech (Student Center, North Carolina State University) the Governor Clinton first indicated his will to negotiate side agreements on environmental and labor issues if elected President. Indeed, the AFL-CIO was part of the Democratic

Party coalition during the first election campaign of President Bill Clinton. But, as said Elwell (1995: 14), Mexico strongly resisted to NAFTA side agreements because of higher labor and environmental costs in Mexico could displace investment and jobs to other South American countries, or even in Asia. Moreover, NAALC actually is a side agreement of NAFTA. Only NAFTA has an accession mechanism for other countries like Chile. As said some authors (Compa: 1995: 357; Housman and Orbuch: 1993: 768), a country could join only NAFTA, without taking into account its labor and environmental side agreements, even without being submitted to a review process of its own labor rights regime. Lance Compa thus concludes that NAFTA Parties will soon have to decide if the new entrants have to sign the side agreements. It will not probably cause problems to Chile, but it will always be the case in the context of the hemispheric economic integration processes. On February 6th, 1997, an Agreement on Labour Cooperation has been signed between Canada and Chile and could serve as a bridge for Chile's entry into NAFTA. It is similar to the NAALC. However, it seems that Chile's accession to NAFTA will not be realized before the next Presidential elections in U.S., due to the impossibility for Clinton administration to get agreement on a "fast-track" authority.

In United States, Republicans exert some pressure to insure that the Clinton administration will keep trade sanctions from being included in future labor and environmental agreements (Cook: 1996-1997: 18). Indeed, some authors would agree that labor agreements should include greater monetary sanctions (fines) in the enforcement measures for violations of a country's labor laws, in order to insure that the developing country wil not get an unfair advantage over the developed coutry by violating its own labor laws (Pomeroy: 1996: 800). It could mean the strengthening of the current NAALC, the widening of its labor principes. The expansion of NAFTA to other countries (South American or not) could provide the opportunity to widen the labor principles currently described in the NAALC, or it could be the "acid test" of the labor principles to the current NAALC.

The Labor Secretariat should have more independence, that is, the authority to conduct, and make public independent studies or to form expert advisory committees on topics of its own choice (Herzenberg: 1996: 25). The "evaluation committees of experts"

(ECE) should have the mandate to address some labor rights issues (for instance, the rights to association and organizing, collective bargaining, the right to strike), although they can deal with such issues in their reports abour related subject matters (Herzenberg: 1995: 18). Some authors (Compa: 1995: 355-356; Helfeld: 1995: 376) suggest that such labor rights should be the subject of either ECE analysis and recommendation or of the Arbitrary Panel dispute settlement, rather than only a review and a report by the domestic National Administrative Office (NAO). As said few authors (Reza, Peake and Dyck: 1996: 64; Fuentes Muniz: 1995: 391-393), only three labor rigths are subject to dispute resolution procedures that could result in fines (up to 20 millions $ or a re-imposition of the pre-NAFTA tariffs up to the amount of the fines that the Party fails to pay) against the Party which fails to enforce its own national laws about occupational health and safety, child labor and minimum wage (Pomeroy: 1996: 777). The rigths to organize, bargain collectively, and to strike are left to consultation and cooperation processes between the Parties. It is particularly striking to observe that the labor rights that the ECE should have the mandate to address are those which are actually included in the GSP and serve as criteria for applying a loss of trade benefits to developing countries. Few "think-tank" organizations (such as the Sierra Club and the International Labor Rights Fund) suggested to eliminate the "three-tier" division of rigths enforcement that excludes the most basic labor rights.

b) Southern America Integration Projects.

On January 1st, 1995, the Southern Common Market (Mercado Comun del Sur, or MERCOSUR), including Brazil, Uruguay, Paraguay, Argentina) was in effect. Indeed, it has been created by the "Treaty of Asuncion", signed on March 26, 1991. But its ancestor was the Argentina-Brazil Program for Economic Cooperation and Integration, ratified in 1989. In December 1994, the "Ouro Preto Protocol" (signed in Brazil) sets up the institutional structure of MERCOSUR. MERCOSUR countries make up near to 45% of Latin American population, 60% of its total land area and 50% of the region's GSP. MERCOSUR was and is still clearly to the advantage of the bilateral trade between Brazil and Argentina (which represent near to 85% of

the total trade between the four MERCOSUR countries. As said De Aguinis (1995: 601), the Treaty of Asuncion established the goal of becoming a common market. MERCOSUR countries seem to try negotiating a free trade zone with the European Community, with Australian and New Zealand, or with the Andean Community (Bolivia, Colombia, Ecuador, Peru, Venezuela)[1], through the membership of the given countries to the Latin American Integration Association, or ALADI, created soon after the 1980 Treaty of Montevideo (signed by 11 Latin American countries, including Brazil and Mexico), rather than seriously being involved in and integrating approach to NAFTA. MERCOSUR actually includes a working group (Subgroup 11) about labor relations, set up in December 1991 (due to the initiative of the four labor Ministers, under the pressure of their national labor unions), so that there is a (thin) possibility to see MERCOSUR Parties adopt a labor rights agreement. In May 1991, the Declaration of Montevideo, signed by the labor Ministers of MERCOSUR countries, recommended to set up a "Social Charter for MERCOSUR". In December 1993, a draft "Charter of Fundamental Rights in MERCOSUR" was submitted, by the Coordinator of the Labor Central of MERCOSUR countries, to the Subgroup 11, but was not adopted.

There is also many bilateral free trade agreements, such as Chile-Mexico (1991), Argentina-Chile (1991), Bolivia-Peru (1992), Chile-Venezuela (1993), Bolivia-Chile (1993), Colombia-Chile (1993). There are multilateral free trade agreements: (1) the "Group of Three" (Mexico, Venezuela, Colombia); (2) the "Central American Integration System" (SICA), giving birth to the Central American Market (CACM), created by the Treaty of Integration in 1960. SICA includes Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama; (3) the "Caribbean Common Market" (CARICOM), created in the mid-1960's and revitalized in 1973 by the adherence

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[1] The Andean Pact was signed in 1969 and mainly dealt with liberalization of intraregional trade, achievement of a common external tariff, a common treatment of foreign direct investment. The Andean Trade Preference Pact of 1991 was the basis for the Andean Free Trade Zone, which took effect on January 1st, 1995. It gives duty-free treatment to eligible articles from beneficiary countries in the Andean community. It includes mandatory and discretionary criteria which look like those of the Caribbean Basin Economy Recovery Act.

of the Caribbean Free Trade Association (CARIFTA) to the Treaty of Chaguaramas. The Caribbean Basin Economic Recovery Act of 1983 implemented President Reagan's Caribbean Basin Initiative (CBI). Twenty-seven countries in the Caribbean Basin region could be eligible. But they should meet mandatory criteria: few of them are identical to U.S. GSP exclusionary criteria. Since the Caribbean Basin Economy Recovery Expansion Act of 1990, the duty-free treatment is extended in perpetuity, but another mandatory criterion has been added: the failure to take steps to afford internationally recognized worker rights to workers in the country. Curiously, the discretionary criterion about labor standards remains and seems to be identical to the new mandatory criterion! In the CBI, there are 11 discretionary criteria, including the degree to which the country follows accepted rules of international trade under international agreements, the degree to which trade policies of the country vis-à-vis other Caribbean Basic countries actually contribute to the economic revitalization of the region, the degree to which the country has taken or is taking steps to afford its workers internationally recognized worker rights (freedom of association, collective bargaining, working conditions, labor standards in export-processing zone). Some of CARICOM countries have taken significant labor commitments, like Honduras, El Salvador, Dominican Republic. Finally, rather than directly trying to join MERCOSUR, many Latin American countries (like Chile, Bolivia, Ecuador) will probably prefer to sign bilateral or multilateral free trade agreements, since the full membership of a country to the current MERCOSUR implies the unanimous approval of Brazil, Uruguay, Paraguay, and Argentina.

c) U.S. GSP: Protectionism vs Social Dumping.

By the Trade Act of 1974, the United States Congress has adopted (and amended them by the Trade and Tariff Act of 1984) the unilateral labor rights provisions of the "Generalized System of Preferences" (GSP), which authorizes the President to grant developing countries[2] some trade preferential conditions (duty-free

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[2] Except Mexico, which is under the NAALC, and probably also the MERCOSUR countries, because of the "Four Plus One" agreement.

treatment to some products coming from such developing countries) and especially the access to US markets. The duty-free treatment began on January 1st, 1976. According to Section 502b of the Trade Act of 1974, some mandatory exclusionary criteria are part of the screening process. For instance, the developing country must not be a communist country unless the products of such a country receive nondiscriminatory treatment, or such countries are members of IMF and of GATT, or such countries are not dominated or controlled by "international communism" (what's that?). The members of the Organization of Petroleum Exporting Countries (OPEC) are also excluded. The countries which do not take "adequate steps" to cooperate with the U.S. in preventing the importation into the US of narcotic drugs or other controlled substances; we should remind that Mexico and MERCOSUR countries are technically excluded of the GSP, because of multilateral treaties (NAFTA, "Four Plus One"). The President could withdraw or suspend the GSP status to a given country which could no longer meet the exclusionary criteria.

Since 1984, the GSP committee (Trade Policy Staff Committee, chaired by the US Trade Representative, or USTR), has to decide, after public hearings, to grant, suspend or terminate the GSP status of the developing countries, out the the principle that they "take steps" (there is no guidelines for the assessment of such steps, so that it could be highly political!) to recognize to the workers five internationally recognized worker rights: the rights to association[3], the right to organize and bargain collectively[4], the prohibition of forced labour[5], the minimum age for child

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[3] INTERNATIONAL LABOUR ORGANIZATION, *Freedom of Association and Protection of the Right to Organize Convention*, no 87, 1948.

[4] INTERNATIONAL LABOUR ORGANIZATION, *Right to Organize and Collective Bargaining Convention*, no 98, 1949.

[5] INTERNATIONAL LABOUR ORGANIZATION, *Forced Labour Convention*, no 29, 1930; *Abolition of Forced Labour Convention*, no 195, 1957.

labour[6], the right to acceptable working conditions[7] as to minimum wages, working hours and occupational health and safety. The GSP status is perceived by the developing countries as a significant economic advantage and as an instrument of American imperialism. Even the US business community does not encourage this system, fearing to lose large markets by suspension or termination of a GSP status for countries like China or Indonesia (Charnovitz: 1995: 184). And we have seen U.S. capitulation to Chinese intransigeance on the linkage between human rights and international trade, as well as the renewal of the "Most-favoured nation" status (MFN) to China! Many labor rights are already in the NAALC, which has a broader scope than GSP on such matters. Thus, unlike GSP (probably because of the pressure exerted by some Republican members of the House), NAALC includes the prohibition of discrimination in the workplace[8]. The ILO itself considers the 1958 Convention against discrimination as a basic human rights convention, beside the others already recognized in GSP. Some labor rights are thus considered as universal human rights by a large number of countries (Sengenberger and Campbell: 1994). OECD includes non-discrimination in employment in its core labour standards but the right to acceptable working conditions is not part of such core standards. The OECD core standards were embodied in the Declaration of the 1995 World Social Summit, held in Copenhagen.

The GSP labor rights provisions have also been criticized since they show an "aggressive-unilateral labor rights approach" and seen to be an excuse for protectionism, especially when we observe that the U.S. have signed very few ILO Conventions (Charnovitz: 1995: 172). As said Howse and Trebilcock (1996: 61), some protectionists are masquerading themselves as moralists. Indeed, the U.S. are the most reluctant major industrial nation as to the ratification of ILO Conventions. Some authors (Howse and

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6 INTERNATIONAL LABOUR ORGANIZATION, *Minimum Age Convention*, no 138, 1973.

7 INTERNATIONAL LABOUR ORGANIZATION, *Equal Remuneration Convention*, no 100, 1951.

8 INTERNATIONAL LABOUR ORGANIZATION, *Discrimination (Employment and Occupation) Convention*, no 111, 1958.

Trebilcock: 1996: 62; Charnovitz: 1995: 178) stated that part of the American culture is constituted of a reluctance to see American policies reviewed by an international organization. As said Polmeroy (1996: 776), the business community argued that ILO Conventions should not be indirectly applied to U.S. through an international labor agreement, because the U.S. have not ratified most of the ILO Conventions. Moreover, the U.S. human rights approach centered on competition side effects has been reinforced for nearly 80 years. The fear for "social dumping" has been transmitted from generation to generation of U.S. administrators[9], so that it was not surprising to see the U.S. administration trying to raise labor rights issues in GATT (Charnovitz: 1995: 169-171, 180).

Moreover, the fact that some developing countries will have a GSP status only if they conform themselves to some basic human rights don't prevent developed countries which don't respect some basic human rights to increase their trade with the U.S. In 1987 and 1990, the U.S. tried to introduce in the GATT the linkage between international trade and labor rights. The Uruguay Round of Multilateral Trade Negotiations, finalized in Marrakesh (Morocco) (April 15, 1994) adopted the "World Trade Organization" (WTO), replacing GATT, without any labor rights protection, without any social clause, although the U.S. tried to include labor standards in the negotiations issues. The "Omnibus Trade and Competitiveness Act of 1988 granted authority to President to negotiate trade agreements in the context of the Uruguay Round and authorizes the Congress to review such agreements on a non-amendable basis (fast-track procedures). The OECD has confirmed that the linkage of trade and labor standards in the WTO would strengthen the multilateral system and would be in the interest of both industrial and developing countries[10]. The enforcement of core labour rights through an eventual "social clause" adopted by the WTO would ensure that the motives behind the social clause are actually not

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9 U.S. WAR LABOR POLICIES BOARD, *Report on International Labor Standards*, Washington, GPO, 1919, p. 7.

10 ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *Trade and Labour Standards*, Directorate for Education, Employment, Labour and Social Affairs, January 16, 1996.

protectionist insofar as all States are obliged to enforce such rights. The Havana Charter (1948) recognized the closed relationships between labor standards and international trade. Moreover, the article XX (e) of GATT, dealing with the products of prison labor, could be expanded by including the basic ILO Conventions (no 87, 98, 29 and 105, 100, 111, 138)[11]. However, insofar as the adoption of a social clause requires a two-third majority and developing countries are reluctant to such a clause and constitute a majority of WTO members[12], the path toward a social clause at the WTO should take "parallel roads"[13]. As to the Americas, we could think about an "Inter-agency Committee for Human Rights", for OAS and ILO, as the basis for a monitoring organization for human rights in the Western hemisphere (to be included in the FTAA process, or in the Action Plan of the Summit of the Americas).

Can higher labor standards be promoted in a non-protectionist way? Charnovitz (1995; 1994) admitted that the potential for protectionist abuse of the linkage of trade priviledges with labor standards is quite high. Such a linkage could be used for trade protection. Moreover, enunciating basic labor rights and their observance would become part of what he called "managed trade". The possibility to promote higher labor standards in a non-

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11 Herbert MAIER, «International Labor Standards and Economic Integration: The Perspective of the International Labor Organization», *International Labor Standards and Global Economic Integration: Proceedings of a Symposium*, Washington, U.S. Department of Labor, Bureau of International Labor Affairs, July 1994, p. 13.

12 Such a possibility is endorsed by T.N. SRINIVASAN (Yale University): «International Labor Standards Once Again», *International Labor Standards and Global Economic Integration* (1994), p. 38.

13 THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, *The 1996 Quadrennial Report on Human Rights and U.S. Foreign Policy*, New York, p. 31-42.

protectionist way is not self-evident[14]. Four remarks should be made at this step: (1) as said De Wet (1995: 446-447), the neoliberalistic approach suggests that labor standards interfer in the market processes and distort the free trade, so that the non-observance of core labor standards would be a tool to strengthen exports and foreign direct investment. It believes in market mechanisms which will throw out of the market the "employers-without-concern-for-their-employees" (low wages, unsafe working conditions, and so forth); (2) even the OECD acknowledges that there is no correlation between real-wage growth and the degree of observance of freedom of association rights. There is no evidence that freedom of association rights worsened in countries liberalizing trade. There is no evidence that the promotion of such rights impeded a subsequent trade liberalization. There is no evidence that freedom of association strongly influences the determination of export prices. Indeed, freedom of association could increase labour costs as well as reduce them in raising job satisfaction and productivity. There is no evidence that "low" core standards could lead to "low" real-wage growth, or that "high" core standards imply higher real-wage growth; (3) there is no evidence that low-standards countries have a better export performance than high-standards countries; there seems to be a two-way relationships between successfully trade reforms and improvements in core standards, so that the enforcement of core labor standards appear as strenghtening the long-run economic performance of the countries; (4) we do not know the real impact of international codes of conduct for multinationals (such as the OECD Guidelines for Multinational Entreprises and the ILO Tripartite Declaration) on the enforcement of core labor standards in developing countries (OECD: 1996: 6-9; 36-37; 45-46).

The "lone ranger syndrome" (or "free-rider problem") plays a major role in the political will of States' leaders to improve labor conditions in their own countries. Moreover, in increasing labor standards within developing countries, developed countries could negatively affect the competitiveness of their own

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[14] Steve CHARNOVITZ, «Fair Labor Standards and International Trade», *Journal of World Trade Law*, vol. 20, January-February 1986, p. 61-72; Guy CAIRE, *Freedom of Association and Economic Development*, Geneva, ILO, 1977.

multinationals which benefit from the low labor standards for the costs of their overseas production. However, it could result in gains for the producers in the sanctions-imposing country if the multinationals do not have operations in the targeted country (that which is submitted to trade sanctions, if it is not able to meet some labor rights defined by the sanctions-imposing country) and if such multinationals could get a market share of the domestic producers which are indeed their competitors on the domestic as well as international markets. If some trade sanctions are applied to selected countries, there will be a clear economic advantage for the others. But, if it could be possible to apply them to every country that do not comply with some labor standards (universally recognized), then trade sanctions could be justifiable. However, as said Howse and Trebilcock (1996: 74-75), even in an ideal world where all citizens would share the same labor and environmental concerns, labor and environmental laws and regulations would substantially differ between countries, because of climatic, demographic and geopolitical conditions. As in the case of the NAALC, labor rights requirements do not call for all signatories of international Conventions to have the same laws, but to have laws suitable for each individual country. The Director-General of ILO asserted in his 1997 Report (p. 12, 23-24) that denying developing countries the advantages which ensue from differences in levels of development would be tantamount to denying them a share in the profits of globalization and then the possibility of subsequent social development. However, such comparative advantage (stimulating exports and attracting foreign direct investment) should not be artificially maintained to the detriment of social progress. Finally, there are internationally recognized labour standards, whose application is nothing but country-specific.

Higher labor rights universally recognized could also make an end to the "race to the bottom", the pursuit of the lowest labor standards for profit maximization. But we must be realistic in searching for a "common acceptable floor" rather than an "ideal ceiling". Finally, higher labor standards could, in some circumstances, do more harm than good, if the outcome is nothing but a substantial increase in unemployment, a lower per capita income, the degenerescence of the existing social welfare nets. The exports of the targeted products will decrease, so that demand will shift from imports to domestic production. However, long-run positive impacts on global welfare could followed from higher labor

standards and practices, like the decreasing and prevention of international conflicts and wars, a higher rate of unionization (Howse and Trebilcock: 1996: 64-68; 75).

d) The Free Trade Areas for the Americas (FTAA).

The process of the FTAA, that is the elimination of barriers to trade and investment by the year 2005 throughout the Western hemisphere, began at the "Miami Summit of the Americas" (December 1994). But under the FTAA process, which model of labor agreement could be developed? If only the NAALC remains for Canada, US and Mexico, and no other labor agreement is concluded in the context of FTAA, it would be less than a success, as to worker rights. The political negotiations implied in the FTAA, and especially the possibility for the Clinton administration to get the "fast-track negotiation authority" for further multilateral free trade agreements (that is, to delegate to the President the power to regulate foreign trade without having to pass by the point-by-point analysis and the amendment processes of the agreement at the Congress) will play a major role in the existence and the contexts of an eventual "social clause" for the FTAA. The Action plan of FTAA actually includes labor rights. According to Compa (1995: 361), the Republican majority at the Congress could decrease the possibilities for Clinton administration to get the fast-track authority before the next Presidential elections.

The five main economies of the Americas belong either to NAFTA or MERCOSUR. Together, both free trade areas represent 81% of the population and 97% of the gross product. Of course, the potential for Canada and U.S. to increase exports to Latin American countries would be very important, in the case of a continental economic integration. The US have already initiated the path toward such an integration, by signing the "Four Plus One" agreement with MERCOSUR countries on January 19, 1991. In this agreement, labor rights were explicitly recognized. It seems that there are few probabilities that the sub-regional economic integration projects (bilateral or multilateral free trade agreements and MERCOSUR) could be incorporated into NAFTA. But if it would become the real scenario,

what labor rights agreement, if one would be actually kept, would be chosen? The NAALC or the eventual MERCOSUR's Charter of labor rights? Perez-Lopez (1995: 473) proposed the establishment of a hemispheric organization that would secure the observance and promotion of ILO conventions by nations of the hemisphere. Perhaps **a "joint venture" between OAS and ILO could function as a "pilot project" as to an eventual hemispheric organization**. The OAS could also function as a unique catalyst, ensuring that a Charter of labor rights will be kept in any hemispheric economic integration process.

In any economic integration scenario, would it be necessary to conclude a new labor side agreement for the Americas? Chile will not probably be the leader of a continental economic integration, followed by MERCOSUR countries and the other sub-regional economic integration project in Latin America. What is much more probable is that MERCOSUR is and will remain the "leader project" for a "South American free trade area". The process for an eventual South American Free Trade Agreement (SAFTA) is going ahead for many years. On the other hand, negotiations for full accession of Chile into NAFTA began after the 1994 Summit of the Americas. According to Murphy (1995: 420), Chile's choice of NAFTA rather than MERCOSUR is based on the fact that Chile should raise its average tariff level "significantly" to meet the MERCOSUR countries common external tariff. Brazil will probably act as the leader country of SAFTA, so that the final step of the hemispheric economic integration will be in the hands of the two country leaders: Brazil (MERCOSUR) and US (NAFTA).It could give birth to the accession of MERCOSUR to NAFTA, only if this scenario could give subtantial advantages to SAFTA's natural leader (Brazil).

In the context of creating a free-trade area for the Americas, the States involved in the process will be in face of two basic political wills: to avoid protectionism and to avoid social dumping. States are the basic policymakers in the public sphere, so that they should emphasize their task to safeguard the social conscience, to share the resources with objectives of fairness and social justice (Dion: 1997). The Joint Committee OAS-ILO could contribute to such a role, in working for an eventual Social Clause for the Americas.

Chapter 2. Rights, Prohibitions, and Interests: Clues for Screening International Conventions.

We could categorize international Conventions and Declarations dealing with human and labor rights as emphasizing either rights and liberties, or prohibitions, or human interests.

a) An Emphasis on Rights and Liberties

Rights are usually defined as "what-is-due" to human beings (and sometimes nonhuman beings) following from their own nature or species. Rights are then universal, because they characterize species rather than individuals. Some basic rights and liberties have been recognized by many international Conventions.

As to the labor rights, we could find out:

- freedom of association (ILO Convention, no 87)
- collective bargaining (ILO Convention no 98)
- right to work in just and favourable conditions; right to social security; right to decent standards of living; right to education (UN Covenant on Economic, Social and Cultural Rights)
- right to life; freedom of opinion and expression; right to security; right to privacy; right to a fair trial; freedom of conscience and religion; liberty of movement; right to peaceful assembly (UN Covenant on Civil and Political Rights)

b) An Emphasis on Prohibited Human Behaviors

Prohibitions are more rooted in cultures and civilizations than in human nature, although some of them are quite close to universal taboos, thus to human nature. Prohibitions actually show

the basic difficulty to distinguish the culture-specific and the natural-universal nature of human being.

We could find out numerous prohibitions in national laws and regulations as well as international Conventions. As to the workplace, however, the following international Conventions emphasized prohibitions in their contents:

- prohibition of forced labour (ILO Conventions nos 29 and 105)
- minimum age for child labour (ILO Convention no 138)
- non-discrimination in employment or occupation (ILO Conventions nos 100 and 111; OECD Guidelines for Multinational Enterprises)
- bribery, corruption (OECD Convention on Combatting Bribery; OAS Convention Against Corruption; OECD Guidelines for Multinational Enterprises)
- improper political activities, unfair competition, political contributions, transgression of local laws and regulations (OECD Guidelines for Multinational Enterprises)

C) An Emphasis on Human Interests

Interests are definitely rooted in cultural contexts and the historical evolution of civilizations and are far from being identified to some element of human nature.

As to the workplace, the ILO Tripartite Declaration is the unique international Convention emphasizing human interests in that sense, insofar as it recognizes the need for creating employment opportunities, for security of employment, training of employees, promotion of social and economic welfare, safety and health in the workplace: all elements, even the latter, whose contents ultimately depend on national cultures in which busines corporations operate.

Chapter 3. Toward a "Social Clause": From Core Values to Enforcement Measures.

Parties should take the leadership in establishing and applying ethical business principles, in respecting the integrity of local cultures. They should stimulate their own business corporations to set up a code of ethics reflecting their own organizational cultures. They should apply ethical principles in all of their relations, including with local communities, which should be involved in decision-making process for issues that affect them. They should strive to improve the lives of employees, suppliers and distributors, agents and consultants, customers. They should try to provide the highest quality products and services and contribute to the social well-being and improvement of the countries in which their business corporations operate.

a) CORE VALUES

All Parties should have the right to pursue their whole development, under circumstances of liberty and economic security, and for that purpose, they should, in their own national laws and regulations, strive for:

DIGNITY

Work gives dignity to the one who performs it, and it should be performed under conditions that ensure life, health, and a decent standard of living for the workers and their families. Dignity should be respected for all stakeholders, but especially through marketing and advertising practices.

OPENNESS

Sharing information at every level of the business corporations, especially the relevant information relating to the entreprise as a whole, such as the structure of the entreprise, the operating results and sales, the new capital investment by geographical area, the sources and uses of funds, the Research and Development expenditures, the accounting policies.

HONESTY

Honesty should be actualized in communications with all stakeholders. In that context, Parties should set up a basis for effective international judicial co-operation for struggling against bribery, corruption and industrial espionage.

FAIRNESS

Fairness should be actualized especially in relations with consumers, competitors and suppliers.

SOCIAL JUSTICE

Social justice implies to share wealth with local communities, ensuring economic security for all, to promote economic and social welfare, in the countries in which Parties operate, to improve living standards and the satisfaction of basic needs, to create employment opportunities, both directly and indirectly.

EQUALITY

Equality implies to promote equality of opportunity and treatment in employment, with a view of eliminating any form of discrimination.

MUTUAL RESPECT

Mutual respect should be actualized towards every stakeholder.

b) THE RESPECT OF CORE LABOR STANDARDS

The following are guiding principles that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces[15].

1. Freedom of association and protection of the right to organize[16]

The right of workers exercized freely and without impediment to establish and join organizations of their own choosing to further and defend their interests.

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[15] From 1 to 11, it is the full text of the current NAALC.

[16] Cf. ILO Convention no 87.

2. The right to bargain collectively[17]

The protection of the right of organized workers to freely engage in collective bargaining on matters concerning the terms and conditions of employment.

3. The right to strike

The protection of the right of workers to strike in order to defend their collective interests.

4. Prohibition of forced labor[18]

The prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally considered acceptable by the Parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes and work enacted in cases of emergency.

5. Labor protections for children and young persons[19]

The establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full

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17 Cf. ILO Convention no 98.

18 Cf. ILO Conventions no 29 and 105.

19 Cf. ILO Convention no 138; UN Convention on the Rights of Child.

physical, mental and moral development of young persons, including schooling and safety requierements.

6. Minimum employment standards[20]

The establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

7. Elimination of employment discrimination[21]

Elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requierements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

8. Equal pay for women and men.

Equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

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[20] ILO Tripartite Declaration; UN Convention on the Rights of the Child; UN Covenant on Economic, Social and Cultural Rights.

[21] ILO Conventions no 100 and 111; ILO Tripartite Declaration; UN Covenant on Economic, Social and Cultural Rights; OECD Guidelines for Multinational Enterprises.

9. Prevention of occupational injuries and illnesses[22]

Prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

10. Compensation in case of occupational injuries and illnesses[23]

The establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with or occurring in the course of employment.

11. Protection of migrant workers

Providing migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions.

12. Freedom of expression

Freedom of expression is essential to sustained progress.

13. Freedom of thought, conscience and religion

Freedom of thought, conscience and religion is nothing but an essential element of human progress.

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[22] ILO Tripartite Declaration; OECD Guidelines for Multinational Enterprises.

[23] *Idem*.

14. Right to peaceful assembly

The right to peaceful assembly widens the right to association insofar as it gives more scope to peaceful relationships in the workplace.

15. Right to security

The right to security is closely related to the basic human need for financial, material and physical security.

16. Right to privacy

The right to privacy is an important clue for the respect of individuals in every society.

17. Right to life

The right to life is in the core of basic human rights, rooted in human nature and should then serve as the basis for interpreting labor rights.

c) COMBATTING CORRUPTION[24]

Corruption affects the legitimacy of public institutions and democracy, distorts the economic system and contributes to social disintegration. Fighting corruption strenghtens democratic

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[24] This section has been made in order to facilitate the actual involvement of the OAS, for which corruption issues are particularly important.

institutions and prevents distortions of the economy, improprieties in public administration and damage to a society's moral fiber.

1. The Parties will promote and facilitate international cooperation in fighting corruption and especially in taking appropriate action against corporations committing acts of corruption.

2. The Parties will make efforts to prevent, detect, punish, and eradicate corruption in the performance of public functions and acts of corruption specifically related to such a performance.

3. The Parties should effect changes to achieve transparency and effective accountability regarding the functions of Government.

4. The Parties will supervise governmental functions to strenghten internal mechanisms, including the capabilities for investigation and compliance with the laws with respect to acts of corruption, facilitation public access to information needed for meaningful external scrutiny.

5. The Parties will establish their own rules regarding conflicts of interests for public employees and effective measures against unlawful enrichment.

6. The Parties will adopt and enforce measures against bribery in their financial and commercial transactions.

7. The Parties will set up cooperation mechanisms in the banking and judicial sectors for effective response in international investigations in cases of corruption.

8. The Parties will encourage cooperation and exchange of experience in the area of combatting corruption.

9. The Parties will support activities to ensure compliance with measures against bribery in financial or commercial transactions.

d) ENFORCEMENT MEASURES[25]

1. Intergovernmental cooperation is essential in realizing the objectives of the Social Clause. Each Party should exchange information on the measures it has taken to give effect to this Social Clause and on their experience with this Clause. Parties should consult on a bilateral or multilateral basis, as appropriate, on matters relating to this Social Clause and its application, and with respect to the development of international agreements and arrangements on issues related to this Clause.

2. Parties should publicize and disseminate the Social Clause to their business communities. They should take into account the provisions of this Clause, when introducing, implementing and reviewing laws, regulations and administrative practices on matters dealt in this Clause.

3. Each Party will write, every two years, a report (a Labor Information Audit) on the measures taken for applying the various provisions of this Social Clause. Each Party will have to inquire about the various ways by which business corporations doing business with other partners in the Americas have applied the values and principles established in the Social Clause.

4. A **Committee of Experts**, composed of twenty independent, eminent figures in applied ethics, law, sociology or any other relevant field of research, will analyse the reports, submitted by the Parties. The Committee will send its report the a **Joint OAS-ILO Committee for Labor Rights and Social Development**.

5. The OAS-ILO Committee will publish a general report, taking into account the conclusions and recommendations made by the Committee of Experts.

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[25] Such enforcement measures come from the application, mutatis mutandis, to the Social Clause, of suggestions made by the Economic Policy Institute, the Institute for Policy Studies, the International Rights Fund, the Public Citizen's Global Trade Watch, the Sierra Club and the US Business and Industrial Council Educational Foundation, in their joint report about NAFTA (1997).

RECOMMENDATIONS

The Joint OAS-ILO Committee for a Social Clause implies some steps in the existing processes for a hemispheric economic integration:

1) Restructuring the OAS and ensuring, in that process, to make clearer the basic function of the Joint Committee: to work on a Social Clause to be safeguarded through the FTAA processes; re-defining the objectives of the OAS, in order to make the Joint Committee easier to be accepted by the Latin and South American countries;

2) Launching a dialogue between the OAS and the ILO about labor rights, in order to define a common basis for an eventual "FTAA Social Clause";

3) Organizing the Joint Committee in co-ordination with the existing relevant Committees of NAFTA, MERCOSUR and FTAA.

In that process, the leadership of Canada about labor rights shoud be more emphasized, so that such a leadership could directly contribute to set up the Joint Committee OAS-ILO.

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